

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Request for Stay of Wireless-to-Wireless)	
Porting Obligations)	
_____)	

**SPRINT OPPOSITION TO RURAL CARRIER PETITION TO STAY
THE WIRELESS PORTING ORDER**

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Summary of Opposition

The rural LEC (“RLEC”) petitioners have failed to demonstrate the existence of any one of the four stay criteria – much less all four. Their petition should be denied.

1. Likelihood of success on the merits. There is no basis to the RLEC argument that the *Wireless Porting Clarification Order* “effectively mandates geographic location portability.” The FCC held in its *First LNP Order* that LEC-wireless porting involves service provider portability, not location portability, and the FCC recently reaffirmed this holding in its November 10, 2003 *LEC-Wireless Porting Clarification Order*. NANC has determined that LEC-wireless porting does not involving location portability, and the LEC industry conceded in the NANC deliberations that LEC-wireless porting does not involve location portability.

2. Any harms the RLEC petitions would sustain would be self-inflicted. The RLECs allege that the *Wireless Porting Clarification Order* will harm their reputation because calls to wireless customers may “drop.” However, RLEC customer calls will drop *only* if the RLECs fail to implement timely the N-1 protocol, as FCC rules require. Also without factual merit is the RLEC assertion that their customers will encounter “surprise” toll charges in calling wireless customers with ported numbers. As the FCC recognized in its recent *LEC-Wireless Porting Clarification Order*, the port of a number does not change the way a LEC rates its customers’ calls. If a call to a number is local today, the call necessarily will remain local even if the number is ported to another carrier. There will be no customer confusion – unless the RLECs choose to discriminate against customers with ported numbers.

3. Harm to others. The RLEC assertion that a stay of the *Wireless Porting Clarification Order* will harm “no one,” is patently false. A stay in the commencement of wireless LNP will adversely affect not only the 140 million wireless customers but will also adversely affect millions of LEC residential and small business customers that are expecting to be able to port their LEC numbers to wireless carriers beginning November 24, 2003.

4. The public interest. The public interest is not served by a deferral of wireless porting. The requested stay will benefit no one but certain incumbent carriers that seek to use the regulatory process to insulate themselves from competition. The Commission should not continuance such action.

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Sprint Corporation opposes the Emergency Motion for Stay filed on November 4, 2003 by four rural local exchange carriers (“RLECs”) – Central Texas Telephone; Kaplan Telephone; Leaco Rural Telephone; and Valley Telephone – which asks the Commission to stay its October 7, 2003 *Wireless Porting Clarification Order*.¹

The Commission should deny the Petition. The RLECs have not shown that that any of the standards for a stay are met. The “harm” that they predict will occur only if they violate the Commission’s rules regarding call routing in an LNP environment or discriminate against customers with ported numbers. The RLECs’ interpretation of the *Wireless Porting Clarification Order* is erroneous; thus, they have no likelihood of success on the merits. Perhaps most importantly, however, the requested stay effectively would delay the implementation of wireless LNP this month, resulting in harm to millions of wireless consumers, to millions of LEC customers, and to the public interest.

¹ See Central Texas Telephone Cooperative, Inc., Kaplan Telephone Company, Inc., Leaco Rural Telephone Cooperative, Inc., and Valley Telephone Cooperative, Inc., Emergency Motion for Stay, CC Docket No. 95-116 (Nov. 4, 2003)(“RLEC Stay Petition”). See also *Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, Memo-

I. BACKGROUND FACTS: CALL RATING AND ROUTING IN A LEC-WIRELESS PORTING ENVIRONMENT

In addressing the merits of the RLEC Stay Petition, it is important for the Commission to understand how rural LECs such as the petitioners will rate and route their customers' calls to wireless customers with ported numbers. The options available to rural LECs are the same options wireless carriers had in the pre-wireless LNP environment, when they were required to ensure that their wireless customers' mobile-to-land calls were routed to LEC customers with ported numbers.

A. Call Rating. LECs, including rural LECs, face no issues in rating their customers' calls to wireless customers with ported numbers. As the Commission noted this week, "calls to the ported number will continue to be rated in the same fashion as they were prior to the port."²

Under the current system used "industry-wide," LECs rate their customers' calls as local or toll by "comparing the originating and terminating NPA-NXX codes."³ Indeed, as the Commission again observed just last week:

[A]t all relevant times, industry practice among local exchange carriers similarly appears to have been that calls are designed as either local or toll by comparing the NPA-NXX codes of the calling and called parties.⁴

Thus, if the NPA-NXX codes of the calling and called parties are rated to the same local calling area, the LEC serving the calling party will rate the call as local. Conversely, if the NPA-NXX

random Opinion and Order, FCC 03-237 (Oct. 7, 2003) ("Wireless Porting Clarification Order"). Sprint submits this opposition pursuant to 47 C.F.R. § 1.45(d).

² *Telephone Number Portability – CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-284, at ¶ 28 (Nov. 10, 2003) ("LEC-Wireless Porting Clarification Order").

³ *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27181-82 ¶ 301 (2002). LECs do *not*, as the RLECs imply, rate their customers' calls as local or toll based on the point of interconnection with the terminating carrier. Rather, calls are rated as local or toll based on the end points of the calls, with the NPA-XXX codes utilized as the surrogate for these end points. *See id.*

⁴ *Starpower Communications v. Verizon South*, File No. EB-00-MD-19, *Memorandum Opinion and Order*, FCC 03-278, at ¶ 17 (Nov. 7, 2003) ("Starpower Order").

codes of the calling and called parties are rated to different local calling areas, the LEC serving the calling party will rate the call as toll.⁵

The NPA-NXX code in a telephone number does not change when the number is ported from one service provider to another, and porting also does not change the rate center association of the telephone number.⁶ Accordingly, if a call to a number is local in the morning, it necessarily will continue to be rated as local in the afternoon – even if the called number is ported to another service provider in the meantime. Simply stated, with the introduction of service provider portability, including LEC-to-wireless porting, a LEC does not change in any way the way it rates its own customers' calls. Whether the land-to-mobile call involves a ported or non-porting number, a LEC will continue to rate its customers' calls by reference to the originating and terminating rate centers, as it always had done.

B. Call Routing. For call routing in an LNP environment, the Commission has “adopt[ed] NANC’s recommendations, as presented in the *Architecture Task Force Report*”:

We adopt the NANC's recommendation that the N-1 carrier be responsible for ensuring that databases are queried, as necessary, to effectuate number portability. The N-1 carrier can meet this obligation by either querying the number portability database itself or by arranging with another entity to perform database queries on behalf of the N-1 carrier.⁷

As the Commission has noted, the “N-1 carrier” for a local call is the LEC or wireless carrier serving the person originating the call.⁸

⁵ See generally *Starpower Order* at ¶ 9.

⁶ In fact, the FCC has ruled that “ported numbers must remain rated to their original rate center.” *LEC-Wireless Porting Clarification Order* at ¶ 39.

⁷ *Second LNP Order*, 12 FCC Rcd 12281, 12323 ¶¶ 71, 73 (1997). See also 47 C.F.R. § 52.26(a)(incorporating by reference this NANC standard).

⁸ See *Third LNP Order*, 13 FCC Rcd 11701, 11711 ¶ 15 (1998). See also *Third LNP Reconsideration Order*, 17 FCC Rcd 2578, 2588 ¶ 17 (2002)(“Thus, the N-1 carrier (*i.e.*, the last carrier before the terminating carrier) for a local call will usually be the calling customer’s local service provider.”).

The NANC *Architecture Task Force Report* identified two options that rural LECs can utilize to route calls to customers with ported numbers – whether the called party is a LEC or wireless customer. If the rural LEC is LNP capable, it can launch its own LNP queries, obtain the terminating carrier’s Location Routing Number (“LRN”), and then route the call to the carrier currently serving the called party.⁹ Alternatively, if the rural LEC is not LNP capable (and, therefore, incapable of making its own LNP queries), it must make arrangements with another carrier that is LNP capable (*e.g.*, the LATA tandem switch owner), and that carrier will perform the database dip on the RLEC’s behalf.¹⁰

The N-1 carrier call routing method that the Commission has adopted imposes no burdens on rural LECs. Most wireless carriers utilize Type 2 interconnection, whereby they interconnect directly with the LATA tandem switch.¹¹ This Type 2 interconnection provides indirect interconnection with all other carriers subtending the tandem switch, including rural LECs.¹²

⁹ See NANC, *Architecture Task Force Report*, Appendix A, at A-2, Scenario A3 (April 27, 1997) (“*Architecture Task Force Report*”). See also *Third LNP Order*, 13 FCC Rcd at 11711 ¶ 16.

¹⁰ See *Architecture Task Force Report*, Appendix A at A-2, Scenario A4. Even an LNP-capable rural LEC may decide to have the tandem owner perform its LNP queries so as to avoid having to make arrangements to connect to one of the regional LNP databases.

¹¹ Wireless carriers have used Type 2 interconnection since the inception of the mobile telephony industry 20 years ago. See, *e.g.*, *LEC-Wireless Carrier Interconnection Policy Statement*, 59 R.R.2d 1275, 1284 (1986); *LEC-Wireless Carrier Interconnection Declaratory Ruling*, 2 FCC Rcd 2910 ¶ 4, 2913 ¶ 29 (1987).

¹² See generally Bellcore, *Notes on the Network*, TR-NPL-000275, Section 16, Cellular Mobile Carrier Interconnection, at 16-2 § 2.03 (April 1986) (“Type 2A interconnection is at the MTSO and a designed BOC tandem switching system. Through this option, the CMC [Cellular Mobile Carrier] can establish intra-LATA connections to BOC end offices connected to the tandem and to other carriers interconnected through the tandem.”). The FCC has recognized that under Section 251(a), wireless carriers are not required to interconnect directly with other carriers, including to implement LNP. See, *e.g.*, *First Local Competition Order*, 11 FCC Rcd 15499, 15991 ¶ 997 (1996); *First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997). Type 2 interconnection is, moreover, consistent with FCC rules that permit competitive carriers to establish a single point of interconnection (“POI”) per LATA. See, *e.g.*, *Unified Inter-carrier Compensation NPRM*, 16 FCC Rcd 9610, 9634 ¶ 72 (2001); *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27064 ¶ 52 (2002).

In most cases, rural LECs will route land-to-mobile calls to wireless customers with ported numbers the same way they route land-to-mobile calls to wireless customers with non-ported local numbers.¹³ As the Commission again noted only two days ago:

As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.¹⁴

Specifically, rural LECs will route their customer's land-to-mobile local calls over the existing trunk group connecting their network to the LATA tandem switch, and the tandem switch will then forward the call to the mobile switching center ("MSC"). The only difference in a wireless porting environment is that, if the rural LEC does not perform its own LNP queries, the tandem switch owner will perform the additional function of performing the LNP queries on behalf of the RLEC.¹⁵

In summary, LECs (including rural LECs) will rate and route their customers' calls to wireless customers with ported numbers in the same way they rate and route their customers' calls to wireless customers with non-ported numbers.

¹³ LECs may route local calls different than toll calls, but local or toll call routing does not change whether the called party uses a ported number or a non-ported number.

¹⁴ *LEC-Wireless Porting Clarification Order* at ¶ 28.

¹⁵ The decision whether to perform one's own queries or use the query services of another carrier is a business decision that each rural LEC will make. And the rural LECs will recover their LNP query costs – whether they perform their own LNP queries or have the tandem switch owner perform the queries on their behalf. *See, e.g., Third LNP Order*, 13 FCC Rcd at 11724-25 ¶ 36-38; 47 C.F.R. § 52.31.

II. THE CRITERIA FOR A STAY ARE NOT MET

As the RLEC petitioners acknowledge, they must meet four criteria before the Commission may entertain their stay request.¹⁶ Specifically, they must show that: (1) they have a substantial likelihood of success on the merits; (2) they will suffer irreparable injury if the stay is denied; (3) issuance of the stay will not cause substantial harm to other parties; and (4) the public interest will be served by issuance of the stay. The Commission has long held that a “high burden of proof is imposed on parties petitioning for stay of an order’s effectiveness.”¹⁷

Sprint demonstrates below that the RLEC petitioners have failed to demonstrate the existence of any one of the four stay criteria – much less all four.

A. THE RLEC PETITIONERS HAVE NOT DEMONSTRATED THEY ARE LIKELY TO PREVAIL ON THE MERITS

The RLEC petitioners assert that the *Wireless Porting Clarification Order* is “procedurally defective” because it “*effectively* mandates geographic location portability.”¹⁸ According to the RLECs, the Commission in the *Wireless Porting Clarification Order* “reversed” its prior ruling in the *First LNP Order*, where the Commission required LECs to provide service provider portability, but not location portability.¹⁹ This RLEC argument is frivolous. Among other things:

- The RLEC petitioners’ argument is inconsistent with the plain language of the statute, which requires a LEC to permit its customers to port their numbers to any

¹⁶ See RLEC Stay Petition at 2.

¹⁷ *Rust Craft Broadcasting*, 67 F.C.C.2d 180 ¶ 2 (1977). See also *AT&T*, 14 FCC Rcd 17266, 17267 ¶ 6 (1999); *Amendment of Section 1.420(f)*, 11 FCC Rcd 9501, 9595 (1996); *Connecticut Department Public Utility Control*, 11 FCC Rcd 848, 854 ¶ 20 (1995); *Price Cap Performance Review Order*, 10 FCC Rcd 11991, 11999 ¶ 17 (1995). Compare *Mobile Satellite Services*, 18 FCC Rcd 1962, 2086 (2003) (“The Commission cannot permit its processes to be paralyzed by filings that make no attempt to meet the high burden of a stay.”).

¹⁸ RLEC Stay Petition at 7 (emphasis added).

¹⁹ See *id.* at 3.

other carrier providing services “at the same location” where the customer receives his or her LEC services.²⁰

- The Commission rejected this location portability argument only two days ago.²¹ This recently ruling is, moreover consistent with the *First LNP Order*, where the Commission squarely held that LEC-wireless porting involves service provider portability, not location portability.²²
- NANC’s Wireless Wireline Integration Task Force agreed that LEC-wireless porting “is permitted” under existing FCC rules and is not location portability.²³
- Indeed, the LEC industry has agreed LEC-wireless porting constitutes service provider portability, not location portability.²⁴

The *Wireless Porting Clarification Order* is fully consistent with the foregoing. There is nothing in this *Order* where the Commission “reversed” its prior rulings, as the RLEC petitioners have alleged.

The Petitioners are also mistaken in asserting that the *Wireless Porting Clarification Order* permitted numbers to be ported “across rate center boundaries.”²⁵ To the contrary, the

²⁰ See 47 U.S.C. § 153(30). Indeed, the RLEC’s entire argument is based on the proposition that Congress got in wrong in defining number portability. See RLEC Stay Petition at 9 (“The relevant location, however, is not the physical location of the customer but the location of the serving switch.”).

²¹ See *LEC-Wireless Porting Clarification Order* at ¶ 28 (“We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same.”).

²² See *First LNP Order*, 11 FCC Rcd 8352, 8443 ¶ 172 (1996) (“We regard switching among wireline service providers and broadband CMRS providers . . . as changing service providers” and thus falling within the definition of service provider portability.).

²³ See NANC, *Local Number Portability Administrative Working Group Report on Wireless Wireline Integration* (May 8, 1998), Appendix D – Rate Center Issue, at 35 § 6.0 (“Porting from a wireline service provider to a wireless service provider is permitted as long as the subscriber’s initial rate center is within the WSP’s [Wireless Service Provider’s] service area. . . . With terminal mobility the [wireless] subscriber can be physically located anywhere.”).

²⁴ See NANC, *Local Number Portability Administrative Working Group Report on Wireless Wireline Integration* (May 8, 1998), Appendix D – Wireline Position Paper, at 40 § II.B.3 (“Currently available wireless-wireline porting methodologies proposed in the [Wireless Wireline Integration Task Force] have met the criterion of rate center integrity within the technical limitations of LRN service provider portability.”).

²⁵ See, e.g., RLEC Stay Petition at ii, 3, 4, 6, 9 and 10.

Commission has since confirmed that “ported numbers must remain rated to their original rate center,”²⁶ so numbers will not be ported “across rate center boundaries.”

The RLEC petitioners finally complain that the Commission did not require wireless carriers to connect directly with each other as a precondition to porting.²⁷ However, these are the same rules the Commission has adopted for LEC-LEC porting.²⁸ These rulings, moreover, are fully supported by, and consistent with, all prior Commission precedent.²⁹

In summary, the RLEC petitioners are incorrect in arguing that the Commission in the *Wireless Porting Clarification Order* “reversed” itself and “effectively” ordered location portability rather than service provider portability.

B. ANY HARM THE RLEC PETITIONERS SUSTAIN WOULD BE SELF-INFLICTED DUE TO VIOLATION OF THE FCC’S RULES

The RLEC petitioners assert that the *Wireless Porting Clarification Order* will “damage their reputations” and that this damage will be “both severe and irreparable.”³⁰ This injury will occur, the RLECs claim, because their customers’ calls to wireless customers with ported numbers will drop or, alternatively, their customers will face “surprise toll charges” in calling these wireless customers:

²⁶ *LEC-Wireless Porting Clarification Order* at ¶ 39.

²⁷ *See, e.g.*, RLEC Stay Petition at 3.

²⁸ *See LEC-Wireless Porting Clarification Order* at ¶¶ 26-28. The NANC standards that the FCC has incorporated in its rules confirm that direct interconnection is not required for LEC-LEC porting: “If no direct connection exists between LEC-4 and LEC-2, calls may be terminated through tandem agreement with LEC-1.” *Architecture Task Force Report*, Attachment A at A-2, Scenarios A3. *See also id.* at 8 § 7.8 (“Each designated N-1 carrier is responsible for ensuring queries are performed on an N-1 basis where the ‘N’ is the entity terminating the call to the end user, or a network provider contract by the entity to provide tandem access.”)(emphasis added).

²⁹ *See, e.g., First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7305 ¶ 121 (1997)(“[T]o provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1).”)(emphasis added).

³⁰ RLEC Stay Petition at 7.

The inevitable result of dropped or interrupted calls, or surprise toll bills, following from the *Order*, is customer confusion and frustration, followed by anger directed at the carrier handling what the customer perceives as a “local” call. The customers of the Rural Carriers will not direct their anger at Sprint, or any NSP; instead, the customers will direct their ire at the Rural Carriers. Such customer anger and dissatisfaction will result in both loss of business to the local carrier as well as substantial damage to its reputation.³¹

As discussed in more detail below, RLEC customer calls to wireless customers with ported numbers will drop *only* if the RLEC fails to implement the Commission-required N-1 protocol. And RLEC customers will face “surprise toll charges” *only* if the RLECs discriminate against other carriers’ customers (whether LEC or wireless) with ported numbers. In the end, the harm about which the RLEC petitioners complain would be entirely self-inflicted and, in this instance, RLEC customers’ anger at their RLEC service provider would be fully justified. Self-inflicted injury is not, however, irreparable harm justifying a stay.³²

1. CALLS WILL NOT “DROP” AS THE RLEC PETITIONERS ASSERT

The RLEC petitioners assert that, as a result of the *Wireless Porting Clarification Order*, their customers’ calls to wireless customers with ported numbers may “drop” or “die.”³³ This assertion is factually inaccurate, as Sprint describes below.

In support of their point, the RLECs provide a “concrete” example where a customer of West Central Wireless, which connects directly to one of the RLEC petitioners, ports his number to a different wireless carrier.

West Central Wireless (“WCW”), a rural CMRS provider, has established a local interconnection arrangement and local numbers in certain CTTC exchanges in

³¹ RLEC Stay Petition at 6-7.

³² *Hirschfeld v. Board of Elections*, 984 F.2d 35 (2d Cir. 1993)(Claim of irreparable injury was meritless because any injury in the absence of a stay would be self-inflicted); *Hirschfeld v. Spanakos*, 104 F.3d 16 (2d Cir. 1997)(same); *Barton v. District of Columbia*, 131 F. Supp. 236, 247 (D.D.C. 2001); *Elizabeth Lee v. Christian Coalition of America*, 160 F. Supp. 2d 14, 33 (D.D.C. 2001)(Case law is well-settled that a movant “does not satisfy the irreparable harm criterion when the alleged harm is self-inflicted.”).

³³ See RLEC Stay Petition at 4-5.

CTTC's service area. A CTTC customer can therefore call a WCW subscriber with a locally rated number as a local call without incurring toll charges. Most other wireless carriers, have not established a local POP in CTTC's service area. . . . Because CTTC has not yet implemented wireline number portability, CTTC could continue to default-route traffic to WCW [if the WCW customer ports to Sprint]. . . . WCW's switch does not provide tandem functionality that would allow it to query and transit incoming default-routed traffic. Nor are CMRS carriers, such as WCW, obligated to accept and transit default-routed traffic. Accordingly, calls from CTTC customers to ported numbers would simply die, resulting in customer confusion and frustration. Default-routing traffic to the old service provider ("OSP") will simply result in an inability to complete such calls.³⁴

The RLEC petitioners state that permitting their customers' calls to drop is "wholly unsatisfactory."³⁵

Sprint agrees that carriers should not permit their own customers' calls to drop. But in the situation that the RLECs describe, there should be no risk that land-to-mobile calls made by CTTC customers (in this example) will drop. When West Central Wireless becomes LNP capable, it will designate its NXX codes as LNP available, and this information will be shared with all industry members *via* the Local Exchange Routing Guide ("LERG"). At that point in time, CTTC can no longer route to West Central Wireless all calls containing West Central's NXX codes (because West Central customers may port their number to another wireless carrier, such as Sprint). As the Commission has stated:

In the *Third Report and Order*, we concluded that "long-term number portability requires N-1 carriers to incur query costs for all interswitch calls to an NXX once number portability is available for that NXX, whether or not the terminating customer has ported a number." We also stated that a carrier must query all interswitch calls to an NXX once number portability is "available" to determine whether the terminating customer has ported the telephone number.³⁶

³⁴ RLEC Stay Petition at 4-5.

³⁵ *Id.* at 5.

³⁶ *Third LNP Reconsideration Order*, 17 FCC Rcd 2578, 2625 ¶ 95 (2002).

In other words, once West Central Wireless becomes LNP capable, all carriers (LEC or wireless) sending traffic to a West Central NXX code must implement the N-1 protocol, so as to ensure they send calls to the correct terminating carrier (which may be West Central Wireless or another carrier, LEC or wireless).

The only way that calls to customers with West Central Wireless ported numbers will drop is if the originating carrier (CTTC in this example) fails to timely activate the N-1 protocol (whether directly in its network or indirectly through the purchase of query services offered by other carriers). Thus, the risk that their customers' calls will drop would appear to be minimal (if non-existent). The customer confusion stemming from dropped calls and resulting harm to the reputation of a rural LEC should give a rural LEC ample incentive to timely activate the N-1 protocol so that porting can occur.³⁷

The Commission recently held that it does "not find these concerns [over dropped calls] to be justified."³⁸ The discussion above confirms that calls will drop only if a LEC permits its customers' calls to drop.

2. RLECs CANNOT ASSESS TOLL CHARGES ON CALLS TO LOCAL PORTED NUMBERS

The RLEC petitioners also propose an alternative to sending ported numbers to the wrong carrier (where their customers' calls would drop) and an alternative to implementing the N-1 protocol – namely, they would "default-route calls to port numbers to the calling customer's PICed IXC":

³⁷ Of course, any carrier refusing to implement the N-1 protocol would subject itself to Section 208 complaints that it is engaged in an unreasonable practice under Section 201(b) of the Communications Act. To minimize the number of complaints filed and to help ensure that customer expectations are met, the FCC should consider reminding all carriers of their obligation to implement timely the N-1 protocol.

³⁸ *LEC-Wireless Porting Clarification Order* at n. 92.

The IXC will, of course, bill its end user customer, and accordingly, the customer will incur toll charges for calls to numbers that appear to be “local” calls. The caller will learn about the changed nature of his or her call only after receiving a bill from the PICed IXC containing “surprise” toll charges for calls to what appear to be local numbers.³⁹

According to the RLEC petitioners, “in order to complete a call” to wireless customers with ported numbers, they “will have to route the call over toll trunks to the [RLECs’] customer’s pre-subscribed (“PICed”) interexchange carrier.”⁴⁰ This RLEC assertion is also factually inaccurate.

As discussed in Part I.A above, the porting of a number from one carrier to another does not change the way a LEC rates its customers’ calls. Thus, if a call to a number is local today, it will remain local after the number is ported. As the Commission has recognized, “the rating of calls to the ported number remains the same”:

[A] wireless carrier porting-in a wireline number is required to maintain the number’s original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port.⁴¹

Thus, calls to a number that is ported are not converted from local to toll, and the customer confusion that the RLEC petitioners allege will not occur.

It would, moreover, constitute an unreasonable practice and be unreasonably discriminatory for any LEC to change this settled call-rating paradigm. The RLEC petitioners appear to suggest that they intend to rate calls to non-porting numbers as local while rating calls to ported

³⁹ RLEC Stay Petition at 6. One way to avoid these “surprise” toll charges, the RLECs state, would be to require their customers to “dial 1 when placing a call” to a ported number (so they know in advance that toll charges will be incurred). *Id.* at 5. However, the RLECs further acknowledge (correctly) that such a discriminatory dialing arrangement would contravene the dialing parity statute. *Id.* at 5-6. The FCC has previously held that a LEC’s Section 251(b)(3) dialing parity obligation extends to wireless carriers. *See Second Local Competition Order*, 11 FCC Rcd 19392, 19429 ¶ 68 (1996) (“We reject USTA’s argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers. To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity.”).

⁴⁰ RLEC Stay Petition at 5. *See id.* at ii and 4.

⁴¹ *LEC-Wireless Porting Clarification Order* at ¶ 28.

numbers as toll. To Sprint's knowledge, the only way that an RLEC can know whether a number has been ported or not (and, therefore, whether its customers' calls should be rated as local or toll) would be if the RLEC was LNP capable (so through the LNP query, it can learn the porting status of the called party).⁴² Thus, in the scenario that the RLEC petitioners appear to present, they would be fully capable of treating calls to ported and non-porting numbers in a nondiscriminatory fashion.

It is important for the Commission to understand what the RLEC petitioners are proposing to do. These RLECs are proposing to *discriminate against customers with ported numbers* (by assessing toll charges on their customers' calls to customers served by other carriers with ported numbers). And, they are willing to engage in this *discrimination* even though they acknowledge *their own customers will be harmed as a result* (by receiving "surprise" toll charges in calling persons with ported numbers), and even though they can port without such discriminatory effects.

An extensive legal analysis is not needed to demonstrate that this RLEC proposal – to discriminate against customers with ported numbers – would constitute both an unreasonable practice under Section 201(b) and be unreasonably discriminatory under Section 202(a) of the Communications Act. Indeed, Congress defined number portability as the ability of customers to change service providers "without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁴³ Sprint encourages the Commission to reject, swiftly and decisively, this latest LEC attempt to impose obstacles on LEC customer porting alternatives.

⁴² The RLECs would also likely have to change their existing billing systems, designed to rate calls as local and toll based on the NXX code of the called party, to implement such a discriminatory scheme.

⁴³ 47 U.S.C. § 153(30).

3. DROPPED CALLS AND “SURPRISE” TOLL CHARGES WOULD ONLY RESULT FROM THE RLECs’ FAILURE TO OBSERVE THEIR FUNDAMENTAL INTER-CONNECTION OBLIGATIONS UNDER THE ACT

One of the fundamental principles of the 1996 Telecommunications Act is that *every* telecommunications carrier has an obligation “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”⁴⁴ For traffic originating on wireless networks, wireless carriers establish the necessary interconnection arrangements to deliver their traffic to every other telecommunications carrier. They do this through either establishing direct facility connections or establishing indirect connections by contracting with third parties. The RLECs, on the other hand, are refusing to acknowledge any obligation to establish the necessary connections to deliver their traffic to other carriers, even to those carriers providing services within the LEC’s service area. Each of the “solutions” proposed by the RLECs is premised on the assumption that they have no obligation to establish even indirect interconnection with other carriers.

This anticompetitive premise is contrary to the entire purpose of the Act – and is the root cause of most disputes between RLECs and all other new entrants to the telecommunications industry, wireless or otherwise. RLECs will continue to make these arguments in every area of intercarrier relations until the Commission explicitly rejects the premise that RLECs are somehow exempt from any interconnection obligations and further confirms that RLECs cannot force all costs of interconnection onto the new competitive providers that have entered the market since passage of the Act.

⁴⁴ 47 U.S.C. § 251(a)(1) (“Each telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”).

**4. IF THE RLECS PROPERLY OBSERVE THEIR OBLIGATIONS, THEIR ONLY
“HARM” WOULD BE ECONOMIC**

Sprint has demonstrated above that the call routing and rating problems that Petitioners claim will damage their reputations will result only if they disregard the Commission’s rules. It is clear, however, why Petitioners have chosen to try to cast their harm in these terms. The other harm that they will face (even assuming their interpretation of the rules was correct) is economic harm, which does not qualify as “irreparable harm” to justify a stay.⁴⁵ Implicit in Petitioners’ arguments that porting numbers to wireless carriers that do not have a physical point of interconnection in Petitioners’ rate centers will result in dropped calls or unanticipated toll calls is that Petitioners are unwilling to pay for facilities to ensure the proper delivery of the traffic their own customers originate – even though Congress was very clear that LECs have the “duty” to bear the costs incurred in the transport and termination of traffic that their own customers originate.⁴⁶

Petitioners have chosen not to emphasize this “harm” in their stay request, likely because they recognize that such harm generally is not considered “irreparable” harm that will support a stay.⁴⁷ As the Commission found in the *Wireless Porting Clarification Order*, these issues are “outside the scope of this order” and “before the Commission in other Proceedings.”⁴⁸ Neither the pendency of these issues nor the Commission’s decision to consider them in the other pending proceedings justifies a stay of the *Wireless Porting Clarification Order*.

⁴⁵ See, e.g., *Wisconsin Gas Co. v. FERC*, 785 F.2d 669 (D.C. Cir. 1985).

⁴⁶ See 47 U.S.C. § 251(b)(5).

⁴⁷ See, e.g., *Wisconsin Gas Co. v. FERC*, 785 F.2d 669 (D.C. Cir. 1985).

⁴⁸ *Wireless Porting Clarification Order* at ¶ 23.

C. GRANT OF A STAY WOULD INJURE MILLIONS OF AMERICANS

The RLEC petitioners assert that while *they* will be injured if the *Wireless Porting Clarification Order* becomes effective, “no one will be injured if the *Order* is stayed.”⁴⁹ This assertion is patently false. Although Petitioners claim that a “stay of the [*Wireless Porting Clarification Order*] will not delay the implementation of WLNP,”⁵⁰ in fact, wireless portability cannot go forward without the guidance that *Order* provides.

In her separate statement, Commissioner Abernathy pointed out that the *Order* “is an important step in providing additional *necessary* guidance to wireless carriers concerning the implementation of wireless-to-wireless local number portability.”⁵¹ The *Order* lays out the applicable business rules that carriers may (and may not) follow in dealing with their customers’ porting requests. It addresses the impact of carriers’ customer agreements on the customers’ porting rights. It addresses the applicable porting interval that carriers must adhere to in completing porting requests. It addresses the responsibilities of carriers’ holding Type 1 numbers, and carrier obligations to support nationwide roaming (both of which had been contested). And it set out the pre-conditions that wireless carriers may demand of other carriers before porting can occur – including whether carriers can insist on numbering resources or direct interconnection in the rate center. As Commissioner Abernathy observed, guidance on these issues was *necessary* to wireless carriers in order for LNP to be implemented. Therefore, if the *Wireless Porting Clarification Order* is stayed, wireless LNP cannot go forward.

Yet the American public is expecting they will enjoy new options before the end of this month. The Commission has specifically told American consumers:

⁴⁹ RLEC Stay Petition at 12.

⁵⁰ Petition at 12.

⁵¹ *Wireless Porting Clarification Order*, Separate Statement of Commissioner Abernathy (emphasis added).

Under the [FCC's] wireless "local number portability" (LNP) rules, you can switch wireless carriers and keep your existing phone number within the same local geographical area where it is currently assigned. In addition to switching from one wireless carrier to another, in some cases, you will be able to switch from a wireline carrier to a wireless carrier, or from a wireless carrier to a wireline carrier and still keep your phone number.⁵²

Deferral of wireless-wireless porting that the RLEC petitioners seek would negatively impact millions of American consumers.

D. THE PUBLIC INTEREST WOULD BE HARMED BY ENTRY OF THE REQUESTED STAY

Because over 140 million wireless customers would effectively lose the benefits of LNP on November 24, 2003 if the RLECs' petition is granted, the public interest would be harmed by a grant of the requested stay. The Commission repeatedly has found that the public interest is served by ensuring that wireless consumers have access to LNP.⁵³ The public interest would also be harmed because millions of LEC residential and small business customers residing in the largest MSAs would be deprived of the opportunity of porting their LEC number to wireless carriers beginning later this month.

The RLEC petitioners claim their requested deferral "will benefit the public as a whole" because "LEC customers will also incur substantial harm, in the form of dropped calls and services charges in excess of expectations for what they deem 'local' calls."⁵⁴ But as discussed in Part II.B above, these LEC customer harms will occur only if a LEC fails to implement the N-1 protocol or decides to discriminate against customers (LEC or wireless) with ported numbers.

The requested stay will benefit no one. Instead, it will cause substantial harm to the public interest. The Petition should be denied.

⁵² FCC, *Wireless Local Number Portability: FCC Consumer Facts* (Nov. 4, 2003).

⁵³ See, e.g., *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd 14972, 14978 (2002).

⁵⁴ RLEC Stay Petition at 12-13.

III. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission deny the RLEC Stay Petition.

Respectfully submitted,

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November 12, 2003

Certificate of Service

I, Jo-Ann Monroe, certify that on this 12th day of November, I caused a copy of the foregoing Sprint Opposition to Rural Carrier Petition to Stay the Wireless Porting Order to be served by first class U.S. mail, postage prepaid, to:

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/s/ Jo-Ann Monroe

Jo-Ann Monroe